



Alan C. Lloyd, Ph.D.
Agency Secretary

Air Resources Board

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Arnold Schwarzenegger
Governor

January 24, 2005

Dr. Barry Wallerstein
Executive Director
South Coast Air Quality Management District
21865 East Copley Drive
Diamond Bar, California 91765-4182

Dear Barry:

I am writing to apprise you of the status of the District's June 4, 2004 request that the Air Resources Board seek a federal waiver from the U.S. Environmental Protection Agency, under Section 209(b) of the Clean Air Act, for the South Coast District's clean fuel fleet rules.

As you know, the ARB provided a 45-day public comment period on the District's waiver request and received more than 10,000 comments in response. In addition, we have had numerous meetings individual stakeholders to hear their concerns. Finally, we have met several times with U.S. EPA staff to discuss the Agency's interpretation of federal law as it relates to your waiver request. Specifically, we have discussed whether locally adopted rules are eligible for a federal waiver, whether this request could be considered within the scope of ARB's prior waiver requests or would initiate a new proceeding, and whether any other legal requirements apply. Through these discussions, we have come to understand there are significant obstacles to obtaining the federal waiver the District desires. These obstacles are enumerated below.

First, the U.S. EPA believes that only state-adopted regulations qualify for waivers under the Clean Air Act. The Agency's reasoning is that Section 209(a) preempts all states and localities from regulating motor vehicles and that Section 209(b) restores that prerogative for the State of California only. Thus, the U.S. EPA recommends that ARB not submit a waiver request for the South Coast fleet rules unless and until the Board readopts them as state regulations. The ARB could retain the current geographical scope of the regulations – statewide application is not required – but it must make them its own and enforceable by the Board. In response to queries about what form "state adoption" must take, U.S. EPA was not completely definitive but pointed to decades of precedent wherein ARB submitted waiver requests only after its regulations are filed and approved by the State Office of Administrative Law.

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Website: <http://www.arb.ca.gov>.

California Environmental Protection Agency

The second obstacle has to do with the nature of the waiver request. South Coast AQMD has requested a determination that its fleet rules are within the scope of previous waivers granted to the ARB for its new standards for heavy-duty motor vehicles and engines. A “within the scope” determination would make the fleet rules enforceable immediately. However, the U.S. EPA believes that the South Coast fleet rules do not qualify for a scope of the waiver determination in its view. A new waiver proceeding would make the District’s fleet rules enforceable only after the federal waiver is granted. The Agency’s reasoning is that the issues raised by the District fleet rules and the affected stakeholders are qualitatively different than those associated with the new engine standards adopted by ARB and were not considered at the time of ARB’s rulemaking. We discussed the possibility of amending one or more of ARB’s pending waiver requests (specifically the 2004 and 2007 model year standards) to add the South Coast fleet rules, but the response from U.S. EPA was not encouraging. The Office of General Counsel believes that such an amendment would be the same as readopting our 2004 and 2007 standards, thereby restarting the clock on ARB’s prior actions and pushing the enforceable dates of our standards out to four years later in the future – an intolerable result.

The third obstacle is U.S. EPA’s preliminary determination that the criterion of four years lead time and 3 years stability between regulatory changes for heavy duty vehicles and engines applies to the South Coast AQMD fleet rules. The ARB maintains that this criterion does not apply to California rulemakings and is applicable to federal standards only. However, it remains an open issue that is yet to be resolved. If U.S. EPA prevails with its interpretation, the South Coast fleet rules would not be enforceable until four years after their readoption by the ARB – in approximately the 2009/2010 timeframe. By that time, the emission control technology on diesel vehicles is expected to meet the same standards as natural gas vehicles unless something unanticipated happens to retard compliance with the state and federal 2010 heavy duty vehicle standards.

In short, there is no expeditious path to restore the legal enforceability of the South Coast District’s fleet rules in the near term. We can convert the rules to ARB regulations and we can make them legally effective four years in the future. But there is no certain path to resuming enforcement of the fleet rules immediately.

Notwithstanding the lengthy and uncertain waiver process ahead, the ARB is prepared to initiate a state rulemaking on the South Coast fleet rules to remove the first and greatest obstacle to obtaining a federal waiver. We would conduct that rulemaking as expeditiously as possible, with adoption envisioned by the end of this year. Please let us know at your earliest convenience whether this pathway appeals to the District.

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On a parallel track, ARB is examining possible control measures – not included in the 2003 South Coast State Implementation Plan – that could provide emission reductions equivalent to the District's suspended fleet rules in the same approximate time frame. The environmental community has conveyed to us that finding such replacement measures is their highest priority if the fleet rules cannot be restored.

I hope this letter clarifies the status of the District's waiver request and the nature of the legal issues confronting our two agencies. As always, my staff and I are available at any time to answer your questions or discuss these matters in greater detail.

Sincerely,

original signed by

Catherine Witherspoon
Executive Officer

cc: ARB Board Members

SCAQMD Board Members

Secretary Lloyd, Cal/EPA

Margo Oge, U.S. EPA